IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 20468 of 2004

Between:

D.C. Veera Swamy Setty Alias haribabu, S/o. Chenchu Raghavaiah,
D.No.16/504, Jonnalagaddavari Street, Nellore, Nellore District.

..... PETITIONER

AND

1 The Commissioner and Spl. Officer, Municipal Corporation of Nellore, Nellore District.
2 The Town Planning Officer, Municipal Corporation of Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Pass a Writ, order or a direction, one in the nature of Writ of Mandamus, (a) declaring the action of the 2nd respondent in asking the petitioner to remove the constructions made at the land situated at Municipal Door No.16/504 Jonnalagaddavari Street, Nellore, admeasuring 90 sq. mtrs. is arbitrary and un-reasonable and accordingly stay the said impugned order of the 2nd respondent in U.C.No.12/2004 dt. 04.10.2004 and (b) consequently direct the Respondents not to interfere with the construction of the petitioner made at the land situated at Municipal Door No.16/504, Jonnalagaddavari Street, Nellore, Admeasuring 90 sq. mtrs.

Counsel for the Petitioner:MR.G.TUHIN KUMAR

Counsel for the Respondents: MR.DANTU.SRINIVAS

The Court, at the stage of admission, made the following :

ORDER

Petitioner said to have made an application to the respondents-Corporation seeking permission for construction of RCC roofed building with ground + three floors, in the month of December, 2000, by paying necessary fees for proceedings with the construction. According to the petitioner, since the said permission was neither granted nor rejected, the petitioner proceeded with the construction under the deeming permission after expiry of 60 days and completed the construction of ground and first floor in the year 2001. For the remaining floors, when the petitioner was proceedings with the construction in the year 2004, he was served with impugned notice dated 4.10.2004 to stop the construction work and to demolish the unauthorized construction. Without submitting explanation to the said notice, the petitioner moved this Court by way of present writ petition contending that once the permission is granted under the deeming provisions of Section 214 of the A.P. Municipalities Act, 1965, the respondents cannot issue the impugned notice alleging that the construction is contrary to the A.P. Municipalities Act and the Rules made thereunder and ordering to remove such construction is illegal and arbitrary.

Even if permission is accorded, the Municipal Corporation prescribes the time limit within which, such construction has to be completed and on expiry of the same, one should specify his intention to proceed with further construction by issuing a notice to the Municipality. No such notice was issued by the petitioner to the respondents-Municipality about his proceeding with the construction under the deemed permission nor after construction, he applied for a certificate for occupying the same. In view of the same, the submission made by the learned counsel for the petitioner

that the petitioner is proceeding with the construction under the deemed permission cannot be countenanced for the reason that if at all any deemed permission is granted, the same is not for indemnity and the validity of the same is only for one year and can be renewable by another one year. Even according to the petitioner, he applied for permission in the year 2000 and under the deeming permission he had constructed ground and first floor. Now, in the year 2004 he cannot proceed with the further construction under the guise of deeming permission, without the permission of the respondents-Corporation. In view of the same, the petitioner shall submit a representation before the respondents on or before 17.11.2004 and on such representation, the respondents-Corporation shall consider the same and pass appropriate orders in accordance with law, within a period of two weeks thereafter. Until a speaking order is passed by the respondents-Corporation, status quo obtaining as on today with regard to the construction shall be maintained by both the parties.

With the above direction, the writ petition is disposed of. No costs.

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A. GOPAL REDDY. J.

8th November, 2004

tsr.

To

1 The Commissioner and Spl. Officer, Municipal Corporation of Nellore, Nellore District.
2 The Town Planning Officer, Municipal Corporation of Nellore, Nellore District.

3. Two C.D. copies.